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No. 87-53 (4)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

Supreme Court, U.S.
FILED
AUG 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

RONALD KRILETICH,

Petitioner,

vs.

COMMISSION ON JUDICIAL PERFORMANCE, et al,
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ALAMEDA, et al.,
CITY OF HAYWARD, et al.,

Respondents.

On Petition for a Writ of Certiorari
to the United State Court of Appeals
for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Performance,
Justice John T. Racanelli,
and Mr. Jack E. Frankel

41pp

QUESTIONS PRESENTED FOR REVIEW INVOLVING STATE RESPONDENTS

1. Whether **COMMISSION ON JUDICIAL PERFORMANCE** ("**COMMISSION**") acted properly pursuant to California Rules of Court Rule 904(a), in refusing to investigate the unfounded and frivolous complaint of **RONALD KRILETICH** ("**MR. KRILETICH**") against various State Court Judges which complaints were filed substantially because the Judges ruled adversely on his two private lawsuits.

2. Whether Article VI section 18(f) of the California Constitution and California Rules of Court Rule 902(a) is constitutional. These provisions permit release by **COMMISSION** of confidential complaints received at the investigative stage, if and only if a formal record is eventually filed by **COMMISSION** in the State Supreme Court. Are these provisions constitutional on their face and as applied to **MR. KRILETICH** where he, a private citizen, desired access to unverified complaints against judges, for his own private purposes of either pursuing hostile and frivolous private litigation against those judges, or for revenge.

3. Whether **MR. KRILETICH** has standing to bring litigation on any of the above questions, where he is not being personally prosecuted or investigated by **COMMISSION.**

4. Whether **JUSTICE JOHN T. RACANELLI** ("**JUSTICE RACANELLI**") and **MR. JACK E. FRANKEL** ("**MR. FRANKEL**") have absolute immunity from personal liability for acts performed in the course of their official conduct with **COMMISSION.**

LIST OF ALL STATE OF CALIFORNIA PARTIES TO THE PROCEEDING

The State of California parties to the proceeding are:

1. Commission on Judicial Performance

2. Justice John T. Racanelli
   California Court of Appeal

3. Mr. Jack E. Frankel
   Director-Chief Counsel
   Commission on Judicial Performance

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No. 87-53

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

RONALD KRILETICH,

Petitioner,

vs.

COMMISSION ON JUDICIAL PERFORMANCE, et al, SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, et al., CITY OF HAYWARD, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United State Court of Appeals for the Ninth Circuit

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JURISDICTIONAL STATEMENT

Plaintiff **MR. KRILETICH** seeks a Writ of Certiori from the decision of the United States Court of Appeal for the Ninth Circuit in this case.

OPINIONS BELOW

The unreported Order of July 25, 1986 and the Judgment of April 7, 1987 of the United States Court of Appeals for the Ninth Circuit have been printed by **MR. KRILETECH** in his Appendix A, pp. A-1, A-2 and A-3.

Attached hereto are the underlying Orders of the District Court: (1) Order on Defendants' Motions to

Dismiss and/or Strike the Complai
November 25, 1985, Appendix A, pp. A
through A-4; (2) Supplement to Order
Defendants' Motions to Dismiss and/
Srike Complaint, December 9, 198
Appendix A, p. A-5; (3) Judgme
Dismissing Complaint, January 21, 198
Appendix A, pp. A-6 and A-7; (4) Ord
January 21, 1986, Appendix A, pp. A
through A-11; (5) Order Denying Leave
File Post-Judgment Motion and Supplement
Pre-Filing Review Order, March 11, 198
Appendix A, pp. A-12 through A-15.

Also attached hereto are t
additional relevant Ninth Circuit Order
Order filed July 25, 1986, Appendix A,
A-16; Order filed July 25, 1986, Append
A, p. A-17.

JURISDICTION

This is an action against state respondents for a declaration of unconstitutionality of two California Rules of Court and a California Constitutional provision. It is also an action for violation of petitioner's civil rights for **COMMISSION'S** refusal to investigate petitioner's complaints against various state judges. Federal jurisdiction exists under 28 United States Code sections 1331, 1337, and 1343(4).

CONSTITUTION, STATUTES AND RULES INVOLVED

This case involves Article VI section 18(f) of the California Constitution, California Rules of Court, Rule 902(a) and Rule 904, and 42 United States Code sections 1983 and 1985, which have been printed by **MR. KRILETICH** in his Appendix B.

This case further involves 28 United States Code section 1915(a) and (d) which is set forth in Appendix B hereto.

STATEMENT OF THE CASE

In approximately 1985, **COMMISSION** received multiple letters from **MR. KRILETICH** alleging in part, failure of four Alameda County Superior Court judges to properly adjudicate petitioner's two pending private lawsuits. **MR. KRILETICH**, a disgruntled litigant, requested that **COMMISSION** investigate and ultimately discipline the named judges substantially because they had ruled adversely on his private litigation.

He further requested in relevant part that **COMMISSION** give him free and full access to information in **COMMISSION** files, including investigatory files containing unverified complaints which had not yet been investigated, and which had not resulted in a record of formal charges against a judge being filed in the Supreme Court after hearing. He specifically asked for information about whether one judge had filed complaints against another judge.

COMMISSION carefully reviewed and considered these letters and requests, concluded that they were either unfounded or frivolous, and declined to proceed.

On August 16, 1985, **MR. KRILETICH** in pro per filed a 226-page complaint against the State respondents herein, and various other judges, attorneys, court reporters, police officers and others.

In November 1985 the District Court issued an Order dismissing all defendants and striking the Complaint with prejudice, setting forth fourteen reasons for its Order, and awarding costs to defendants. Appendix A, pp. A-1 through

A-4. Thereafter, **MR. KRILETICH** unsuccessfully attempted to amend his complaint. On December 9, 1985, the District Court issued a Supplemental Order to set forth one additional reason for dismissing the Complaint. Appendix A, p. A-5. The District Court issued an Order on January 21, 1986, denying the motion for leave to file amended complaint and all other outstanding motions. Appendix A, pp. A-8 through A-11. Judgment was entered thereon January 22, 1986. Appendix A, pp. A-6 and A-7.

Nonetheless, **MR. KRILETICH** wilfully ignored the Orders and Judgment, and continued to deluge the District Court and defendants with various motions, all of which were summarily denied on March 11, 1986 with judgment entered on March 14, 1986. Appendix A, pp. A-12 through A-15. Therein, the District Court suggested that contempt proceedings against petitioner would be within the discretion of the General Duty Judge, should petitioner endeavor to file further pleadings. The District Court further labelled this lititgation as a "patently vexatious action."

On or about February 20, 1986, **MR. KRILETICH** appealed. While his appeal was pending and before the record had been transmitted to the Ninth Circuit, **MR. KRILETICH** continued his vexatious practice by filing in the Ninth Circuit, several Motions for Declaratory Relief against the State respondents. For example, on or about April 29, 1986 he filed a Motion to declare California Constitution section 18(f) and California Rules of Court Rule 902(a) unconstitutional. He also filed a Motion to Remand the matter back to the District Court, and various other motions too numerous and substantively

insignificant to mention. All motions were denied as frivolous by two Orders issued on July 25, 1986. One Order is set forth by **MR. KRILETICH** in his Appendix A. The second Order is set forth herein, Appendix A, p. A-16.

On April 7, 1987, the Appellate Court issued Judgment and denied the appeal, labelling it "frivolous," finding that no defendant violated **MR. KRILETICH'S** constitutional rights, and awarding costs and $1500 in attorney's fees. This Order is set forth by **MR. KRILETICH** in his Appendix A. It is from this Order that **MR. KRILETICH** appeals.

WHEN FEDERAL QUESTIONS WERE FIRST RAISED

Federal questions were first raised against State respondents in the original Complaint, and were ruled upon by the above-referenced District Court Orders.

REASONS WHY CERTIORARI SHOULD NOT BE GRANTED

I. Introduction

This case presents no issue of improper departure from law or procedure by any lower court, or by the State respondents to this litigation. Thus, there is no need for this Court's supervision.

Nor has a state court of last resort decided a federal question in conflict with the decision of another state court of last resort or of a federal court of appeals.

Finally, no state or federal court has decided an important question of federal law which should be settled by this Court, or which conflicts with applicable decisions of this Court.

The Petition for a Writ of Certiorari should therefore be denied.

II. **COMMISSION** ACTED PROPERLY IN REFUSING TO INVESTIGATE **MR. KRILETICH'S** OBVIOUSLY UNFOUNDED AND FRIVOLOUS PRIVATE COMPLAINTS, PURSUANT TO CALIFORNIA RULES OF COURT, RULE 904(a)

As stated in the District Court's November 25, 1985 Order, paragraphs 2, 7 and 8, **MR. KRILETICH** failed to allege any harm to himself, failed to plead a justiciable controversy entitling him to declaratory relief, and otherwise failed to state a claim. The Sixth Circuit in the case of McMinn v. Damaini and Gagliardo, Nos. 84-3717 and 84-3938, Slip Opinion May 3, 1985, set forth among its reasons for denial of an identical case brought against the Pennsylvania equivalent of **COMMISSION**, that the pro se complaint was frivolous under 28 United States Code section 1915(d). This was because McMinn, a private citizen, lacked standing to contest the policies of prosecuting auhorities when he was not being personally prosecuted, and because a federal court should not involve itself in instructing state officials to conform their conduct to state law. See also Thurston v. Robinson, et al., 603 F.Supp. 336 (D. Nev. 1985).

This latter proposition is true under the Eleventh Amendment, as held in Pennhurst State School and Hospital v. Halderman, et al., 104 S. Ct. 900 (1984), and noted by the District Court in its November 25 Order, at paragraph 11.

Likewise **COMMISSION**, a state agency, is immune from suit under the Eleventh Amendment. Edelman v. Jordan, 415 U.S. 651, 663 (1974). Neither did the

State of California consent to be sued herein. See Kennecott Cooper Corp. v. State Tax Commission, 327 U.S. 573, 577 (1945).

Finally, **COMMISSION** is not a "person" within the meaning of 42 United States Code section 1983, and thus is not a proper party. Alabama v. Pugh, 438 U.S. 781 (1978); Allison v. California Adult Authority, 419 F.2d 822, 823 (9th Cir. 1969); Bennett v. People of California, 406 F.2d 36, 39 (9th Cir. 1969), cert. denied, 394 U.S. 966, as noted by the District Court in its November 25 Order, at paragraph 12.

III. ARTICLE VI SECTION 18(f) OF THE CALIFORNIA CONSTITUTION AND CALIFORNIA RULES OF COURT RULE 902(a) ARE CONSTITUTIONAL ON THEIR FACE, AND AS APPLIED TO MR. KRILETICH

A. Requested access to Complaints filed with **COMMISSION**

As of 1981, all fifty of the states, as well as the District of Columbia, had a rule or constitutional provision[1] similar to that in California, Rule 902(a), which in general, grants confidentiality to complaints filed with judicial disciplinary commissions such as **COMMISSION** herein. "Silence Isn't Always Golden: Reassessing Confidentiality in the Judicial Disciplinary Process," Jeffrey M. Shaman and Yvette Beque, Vol. 58, No. 4, 1985, pp. 755-756, Temple Law Quarterly; Landmark Communications Inc. v.

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1. Twelve states use rules or statutes to establish confidentiality, while the rest use constitutional provisions.

Virginia, 435 U.S. 829, 835 and 846 (1978).

As noted by this very Court in the above-cited Landmark case,[2] the only case where this Honorable Court has been called upon to address the issue, confidentiality is thought to promote the public interest by encouraging the filing of citizen complaints without fear of judicial retribution and by protecting the accused judge from personal injury of unfounded complaints.[3][4][5] This Court

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2. Accord, the California Supreme Court in Mosk v. Superior Court, 25 Cal.3d 474, 159 Cal.Rptr. 494, 601 P.2d 1030 (1979) (en banc).

3. One study in 1983 showed that more than 75% of the complaints filed are dismissed because of insufficient information, unfounded or frivolous claims, or lack of commission jurisdiction. 6 Jud. Conduct Rep. No. 3, at 3 (Fall 1984).

4. This Court rejected the Virginia State Court's argument that confidentiality provisions also maintain confidence of the public in the judiciary by preventing permature disclosure of groundless claims. Landmark Communications, Inc. v. Virginia, supra, 435 U.S. at 841.

5. Another state court suggested another reason for confidentiality, namely, protecting the commission's sources from subornation of perjury by the accused judges or their colleagues. People v. DiNapoli, 27 N.Y.2d 229, 235, 316 N.Y.S.2d 622, 625, 265 N.E.2d 449, 452 (1970).

reversed in Landmark, only on the narrow constitutional issue of whether the First Amendment permitted the criminal punishment of third persons (the newspaper) who divulge truthful information regarding confidential commission proceedings. This Court held that none of the reasons for confidentiality justified criminal penalties. This Court, however, did not permit or consider a challenge to the Virginia commission's authority to keep its proceedings confidential, which rule had been upheld by the highest Virginia state court.

MR. KRILETICH herein argues that the First Amendment invalidates California Rule 902(a) because that Amendment requires an "open judicial process" (Petition, page 4), including completely open **COMMISSION** files without any restraint.[6/] However, nothing in reason or logic, or in the cases he cites, requires such a broad and absolute holding. Indeed, this Court has taken a more restrictive view on access to information, versus right to publish information. See Nebraska Press Association v. Stuart, 427 U.S. 539 (1976); Gannett Co. v. DePasquale, 443 U.S. 368 (1979). Such a restrictive view is especially appropriate where as here, access to unverified and possibly unfounded complaints is sought by a disgruntled private citizen for private purposes of pursuing vexatious litigation against superior court judges who ruled adversely on his two lawsuits before them.

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6. His argument for open judicial disciplinary hearings is discussed below.

The cases **MR. KRILETICH** cites are inapposite because they pertain to open court processes, and not to open regulatory processes to investigate or to discipline judges for the conduct of their judicial office during that court process.

The right to receive information and ideas set forth in Kleindienst v. Mandel, 408 U.S. 753. 762 (1971) and New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1963), dealt with ideas and opinions containing political content, not individual complaints related to performance of a judicial office, as herein. Those plaintiffs wanted their opinions to be heard and discussed, which is not the case herein; herein **MR. KRILETICH**, a third party, wants to hear the complaints of one judge or citizen against another judge. In New York Times Co., this Court merely held in relevant part, that political expression does not lose constitutional protection because it has been published in a paid advertisement. Therein, statements were made concerning racial issues. In Kleindienst, the Court upheld exclusion of Dr. Mandel, a controversial Belgian and Marxist journalist, from this country even in the face of claims that the First Amendment protected a citizen's right to meet with and hear Dr. Mandel speak.

Herein, there simply is no public interest equivalent in importance to that represented in the Kleindienst or New York Times Co. cases, namely the interest in free political discussion.

Finally, **MR. KRILETICH** argues that completely open and accessible **COMMISSION** files would provide for public scrutiny of operations of a judicial disciplinary body. However, the Richmond

Newspapers, Inc. v. Virginia, 448 U.S. 551, 569 (1980) case he cites in support of that proposition, pertains to public access to criminal trials. Herein, **MR. KRILETICH** wants access not to a "trial", but to preliminary complaints filed with **COMMISSION** before a formal hearing is held, and before charges are preferred by **COMMISSION** after a hearing. Furthermore, the matter herein is noncriminal, thus the Richmond case is inapposite.

Something less than completely open and accessible files, as is provided for presently in California's Rule 902(a)(1) would clearly satisfy the requirements of the First Amendment, yet preserve the integrity of the judicial disciplinary process, and (2) would protect the professional interests of the judges in being free from unwarranted charges, yet preserve ultimate access of citizens to the governmental process of judicial discipline.

Indeed, California is in the good company of twenty-one other states which also permit public disclosure after a formal hearing has been held, and after the commission makes a recommendation of discipline to the state supreme court. See Temple Law Quarterly, supra, at 756.[7] Indeed, this type of rule has been upheld, as aforenoted, by one state court, and by one district court in First Amendment

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7. Indeed, nine additional states plus the District of Columbia have even more stringent or long-lasting procedures of confidentiality than does California, in that those states permit public disclosure only where a state supreme court orders a sanction. See Temple Law Quarterly, Id.

Coalition v. Judicial Inquiry and Review Board, 579 F.Supp. 1921 (E.D. Pa. 1984). That District Court found a compelling state interest to justify confidentiality at the investigative stage, before formal charges based on probable cause were filed.

Such confidentiality is particularly appropriate under the circumstances of this case, where a disgruntled litigant seeks access to complaints for his own private purposes. **MR. KRILETICH** cleverly in his Petition, fashions himself as a modern day Joan of Arc taking up the interests of the press as his sword, but the underlying litigation and Court Orders clearly reveal that **MR. KRILETICH** is in pursuit of his own private interests, and not the interests of the press or public.

This is not a case such as First Amendment Coalition where news media sought access to complaints. Nor is this a case where a criminal investigative body is seeking access for potential criminal prosecution of the judges. In these types of cases the plaintiff organization may well be serving the interests of public scrutiny that the First Amendment is created to protect. See Landmark Communications Inc, v. Virginia, supra, 435 U.S. at 839.

Thus, as applied to **MR. KRILETICH** and on its face, the Rule guaranteeing confidentiality until formal charges are filed, and California Constitutional provision authorizing it, are clearly constitional.

B. Requested Access to Disciplinary Hearings Held By **COMMISSION**

The right of the public to attend **COMMISSION** disciplinary hearings has never been raised or briefed in any court below. Thus, it would be improper for this Honorable Court to permit **MR. KRILETICH** to raise this issue for the first time in this Court. Delta Airlines v. August, 450 U.S. 346, 362 (1981); United States v. Mendenhall, 446 U.S. 544, 551-52 n. 5 (1980); Youakim v. Miller, 425 U.S. 231, 234 (1976).

However, if it is indeed proper to raise such an issue at this stage, for reasons set forth above, the California Rule and Constitutional provision are constitutional. Indeed, the First Amendment Coalition Court found confidentiality of the hearing stage is appropriate, until a final determination is made.

CONCLUSION

For these reasons, this Honorable Court should refuse to accept certiorari.

Dated: July 31, 1987

Respectfully submitted,
JOHN K. VAN DE KAMP,
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APPENDIX A

RONALD KRILETICH, Plaintiff

v.

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, Defendants

No. C 85 5946 TEH

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORDER ON DEFENDANTS' MOTIONS TO DISMISS AND/OR STRIKE COMPLAINT

The Motions to Dismiss and/or to Strike brought by (1) defendants COMMISSION ON JUDICIAL PERFORMANCE, JUSTICE JOHN T. RACANELLI and JACK E. FRANKEL, (2) defendants SUPERIOR COURT IN AND FOR THE COUNTY OF ALAMEDA, JUDGE RICHARD HODGE, JUDGE RAYMOND MARSH, JUDGE JAMES PERLEY, JUDGE MICHAEL BALLACHEY, ROBERT RICH, AGNES HANSON, LINDA COLE, DON CLARK, PAT CLARK, KATHY McKEAN, VICKI DAYBELL, ALICIA F. WILLIAMS and JEROME MOORE, (3) defendants CITY OF HAYWARD, ALEX GIULIANI, DONALD BLUBAUGH, JESUS ARMAS, CHARLES PLUMMER, O. GIULIANI, SERGEANT HARRISON, D. GREGORY, BILL COOK, W.F. COOPER, F. PASCALE and JOHN BEARD, and (4) defendant Kevin D. Flynn, came on regularly for hearing on November 18, 1985, at 10:00 a.m. Thomas F. Bertrand appeared on behalf of City of Hayward and related defendants; Ann Grogan, Deputy Attorney General, appeared on behalf of Commission on Judicial Performance and related defendants; Anthony S. Petru appeared on behalf of the Superior Court of the County of Alameda and related

defendants. Plaintiff appeared on his own behalf in propria persona.

Upon consideration of the pleadings, memoranda of points and authorities, affidavits of counsel and oral argument, with the Court fully advised and with good cause appearing therefore,

IT IS HEREBY ORDERED that all Motions to Dismiss and/or Strike the Complaint filed herein by the aforesaid defendants are granted with prejudice, and that the complaint herein is therefore dismissed.

The grounds for this Order include, but are not limited to, the following:

1. Pursuant to Federal Rules of Civil Procedure rule 8(a)(23), the complaint does not contain a short and plain statement of the claim without redundant, immaterial, impertinent or scandalous matters therein (e.g., Agner v. Moody (9th Cir. 1964) 330 F.2d 868).

2. The complaint does not state a claim upon which relief can be granted.

3. Plaintiff lacks standing to bring this lawsuit.

4. Defendants are absolutely immune from suit.

5. Plaintiff has failed to allege sufficient and particular facts required to support a claim under either 42 U.S.C. section 1983 or section 1985.

6. Tort claims, if any have been alleged, do not give rise to a civil rights actions.

7. Plaintiff has failed to allege any legally-cognizable injury or harm to himself.

8. Plaintiff has failed to plead a justiciable controversy entitling him to declaratory relief.

9. The doctrine of respondent superior is not applicable in civil rights suits under 42 U.S.C. section 1983 or 1985.

10. The complaint does not state facts amounting to a custom or policy of any defendant to encourage or ignore constitutional violations of subordinates, employees or colleagues, nor does the complaint state facts amounting to negligent supervision by any defendant.

11. The Eleventh Amendment prohibits suit against the State of California in federal court, based on claims of violation of federal or state law.

12. The State of California is not a "person" within the meaning of the 42 U.S.C. sections 1983 and 1985.

13. California Rules of Court rule 902(a) does not violate the due process clause of the Fourteenth Amendment, nor does it constitute prior restraint in violation of the First Amendment of the Federal Constitution, nor is it otherwise unconstitutional.

14. California Constitution, article VI, section 8, does not violate the due process clause of the Fourteenth Amendment, nor is it otherwise unconstitutional.

Date: November 25, 1985

THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

All defendants are awarded their costs of suit herein.

THELTON E. HENDERSON

RONALD KRILETICH, Plaintiff

v.

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, et al., Defendants

No. C 85 5946 TEH

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUPPLEMENT TO ORDER ON DEFENDANTS' MOTIONS TO DISMISS AND/OR STRIKE COMPLAINT

The order heretofore signed and filed dismissing and/or striking the complaint as to defendants SUPERIOR COURT IN AND FOR THE COUNTY OF ALAMEDA, JDUGE RICHARD HODGE, JUDGE RAYMOND MARSH, JDUGE JAMES PERLEY, JUDGE MICHAEL BALLACHEY, ROBERT RICH, JEROME MOORE, AGNES HANSON, LINDA COLE, DON CLARK, PAT CLARK, KATHY McKEAN, VICKI DAYBELL and ALICIA F. WILLIAMS is hereby supplemented to add a further ground upon which the order is based.

The following shall be added to the order at page 4., line 6:

15. This court feels restrained by the principles of equity, comity, and federalism from litigating plaintiff's claims (e.g. Landi v. Phelps (9th Cir, 1984) 740 F.2d 710).

Date: December 9, 1985

THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

RONALD KRILETICH, Plaintiff

v.

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, et al., Defendants

No. C 85 5946 TEH

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUDGMENT DISMISSING COMPLAINT

The motions of:

1. Defendants Commission on Judicial Performance, Justice John T. Racanelli and Jack E. Frankel,

2. Defendants Superior Court in and for the County of Alameda, Judge Richard Hodge, Judge Raymond Marsh, Judge James Perley, Judge Michael Ballachey, Robert Rich, Agnes Hanson, Linda Cole, Don Clark, Pat Clark, Kathy McKean, Vicki Daybell, Alicia F. Williams and Jerome Moore,

3. Defendants City of Hayward, Alex Giuliani, Donald Blubaugh, Jesus Armas, Charles Plummer, O. Giuliani, Sergeant Harrison, D. Gregory, Bill Cook, W.F. Cooper, F. Pascale and John Beard, and

4. Defendant Kevin D. Flynn:

To strike and/or dismiss plaintiff's complaint having been granted by order signed November 25, 1985 and supplemental order signed December 12, 1985.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint herein be, and it is, dismissed as to all above named defendants, and that said defendants shall recover judgment against plaintiff for their costs of suit.

Date: January 21, 1986

THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

RONALD KRILETICH, Plaintiff

v.

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, et al., Defendants

No. C 85 5946 TEH

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORDER

This matter comes before the Court on plaintiff's motions: (1) for leave to file an amended complaint; (2) to alter or amend judgment; (3) to compel defendants to serve all papers onto all parties including real parties in interest; (4) for an Order directing an answer to the first amended complaint; (5) to declare void the supplemental Order on defendants' motion to dismiss and/or strike complaint; (6) for contempt. For the reasons stated in this Order, the Court denies all of these motions.

On November 25, 1985, this Court issued an Order dismissing all defendants and striking the complaint. This Order listed 14 grounds justifying the Court's finding. On December 5, 1985, this Court issued a supplemental Order adding another ground for dismissal. The Court has not yet issued an Order of Judgement in this case.

On December 18, 1985, plaintiff appeared in Court for a status conference which the court had scheduled at the time the original complaint was filed. As the Court had dismissed all of the defendants, none of the them appeared for the status conference. Plaintiff now asks the Court

to find defendants in contempt for failure to appear. Having considered the matter carefully, the Court finds defendants wree not at fault for failing to appear for a case in whch they had been dismissed. Therefore, plaintiff's motion for contempt is DENIED.

On December 4, 1985, plaintiff filed a motion for leave to file an amended complaint. On December 13, 1985, plaintiff filed a motion asking the Court to order defendants to answer the amended complaint. After reviewing the proposed amended complaint, the Court finds that it raises basically the same issues raised in the original complaint. Therefore, for the reasons stated in the Court's Orders of November 25 and December 9, the Court hereby DENIES plaintiff's request to file an amended complaint. The Court also hereby DENIES plaintiff's motion to compel the filing of answers to the amended complaint.

Plaintiff has also asked the Court to alter or amend its original order of dismissal and to declare void the supplemental order of dismissal. The Court declines to change these Orders in any way. The Court issued these Orders after much deliberation and after affording plaintiff a lengthy appearance before the Court. Plaintiff is concerned that the Court issued a supplemental Order without giving him a change to the brief the Court. This supplemental order merely added another ground for dismissal. The Court based this supplemental Order on its own legal research and on the briefs and oral arguments offered to the Court for the November 18, 1985 hearing. Plaintiff had ample opportunity to participate in this process. Furthermore, the Court has full authority to expand one of its Orders

before judgment is entered or an appeal filed. Plaintiff is also concerned that the Court did not rule on his motion to strike insufficient defenses; since the Court dismissed plaintiff's complaint in its entirety, the motion to strike insufficient defenses was moot. For these reasons, the Court hereby DENIES plaintiff's motions to alter the judgment and to declare void the supplemental Order.

Plaintiff also asks the Court to compel defendants to serve all papers onto all parties including the real parties in interest. As the Court has dismissed all defendants from the suit, and is issuing a judgement in this case on this date, there is no need to order defendants to serve papers on a cas which is terminated. Therefore, the Court DENIES plaintiff's motion to compel service.

Plaintiff has indicated he is not satisfied with the conclusions reached by the Court in this case. If so, plaintiff should pursue this actin in the Court of Appeals. Plaintiff should no longer file any papers with this Court. He has consumed a great deal of the Court's time with what have ultimately proved to be frivilous motions.

Therefore, IT IS HEREBY ORDERED that the Clerk of the Court shall not file any additional pleading or document of Mr. kriletich. Such pleadings and documents shall be lodged with the Clerk and shall be considered by the Judge of th Northern District and then filed only if thy are found to have merit.

IT IS FURTHER ORDERED that the hearing scheduled for January 27, 1986 before the Court is cancelled as no further issues remain to be resolved in district court.

IT IS SO ORDERED.

Date: January 21, 1986

THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

RONALD KRILETICH, Plaintiff

v.

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, et al., Defendants

No. C 85 5946 TEH

THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORDER DENYING LEAVE TO FILE POST-JUDGMENT MOTION AND SUPPLEMENTAL PRE-FILING REVIEW ORDER

On November 25, 1985, the Honorable Thelton E. Henderson, Judge of the United States District Court for the Northern District of California, issued his Order granting the motions to dismiss and/or strike the complaint filed in this action by defendants; he stated fourteen distinct legal grounds supporting the Order. A supplemental Order, stating an additional ground for dismissal, was filed on December 9, 1985, and judgment against plaintiff was duly entered on January 21, 1986. In an Order of the same date, Judge Henderson stated:

> Plaintiff has indicated he is not satisfied with the conclusions reached by the Court in this case. If so, plaintiff should pursue this action in the Court of appeals. Plaintiff should no longer file any papers with this Court. He has consumed a great deal of the Court's time with what have ultimately proved to be frivolous motions.
>
> Therefore, IT IS HEREBY ORDERED that the Clerk of the Court shall not file any additional pleading or document of Mr. Kriletich. Such

> pleadings and documents shall be lodged with the Clerk and shall be considered by any Judge of the Northern District and then filed only if they are found to have merit.

Id., at 3:21-4:5 (emphasis added). Notwithstanding the clear purport of this directive, plaintiff continues to deluge the Court with pleadings, memoranda, and hortatory literature of all descriptions, inlcuding his "Table of Both Federal and State Statutes Relating to this Matter," a compendium entitled "Some Quotes and Comments from the Manual for Complex Litigation as Applies to this Case," and his latest opus, a "Motion for Order Suspending, Modifying, Restoring, or Granting Injunction During Pendency of Appeal," received herein on February 27, 1986. There being no injunction in effect in the action, the Court initially viewed this piecemeal pleading with some skepticism; it appears, however, that plaintiff in fact seeks relief from the Pre-Filing Review Order issued by Judge Henderson on January 21, 1985, and quoted at length supra.

The Court is disinclined to grant plaintiff the relief sought or, indeed, any relief at all. At the close of February, 1986, the total pending civil case load for the Judges of the Northern District of California, San Francisco Division, numbered 4,281 (four thousand two hundred eighty-one). Numerically, to permit plaintiff to continue prosecuting this patently vexatious action would not in itself amount to piling Pelion on Ossa: multiply plaintiff by radicals of ten, however, and the Court would soon find itself working overtime merely to penetrate, and ultimately dismiss, the

fractious lucubrations of distempered pro se litigants.

The Court is troubled, moreover, by the "grounds" plaintiff asserts in support of the present motion. He merely avers that, as a result of the Pre-Filing Review Order, he was inconvenienced in his attempts to file documents entitled "Incorporation by Reference - Part 5: Exhibit #67 through Exhibit #95" and "Incorporation by Reference - Part 7: Exhibit #101 through #112." The record, already replete with examples of plaintiff's zealous quest for overdocumentation, need not be supplemented by the inclusion of these kindred pleadings. More disturbing is plaintiff's willful ignorance of the terms of Judge Henderson's Order. So that plaintiff may be impressed with the gravity of Court decrees, therefore, it appears desirable to reinforce and clarify the provisions of the Pre-Filing Review Order already in effect. Accordingly,

IT IS HEREBY ORDERED that no document of any kind in action number C-85-5946-TEH presented by or on behalf of plaintiff be accepted by the Clerk for any reason. The action is closed, and plaintiff's sole recourse is appeal to the United States Court of Appeals for the Ninth Circuit.

IT IS HEREBY ORDERED that, should plaintiff endeavor to file any document in action number C-85-5946-TEH, the Clerk shall forthwith notify the presiding General Duty Judge of this Court. It shall then be up to the discretion of the General Duty Judge whether to institute contempt proceedings against plaintiff; available remedies, should plaintiff be found in contempt,

shall be circumscribed only by the inherent powers of the Court, and shall include fine, imprisonment, or both.

IT IS FURTHER ORDERED that plaintiff is DENIED leave to file his "Motion for Order Suspending, Modifying, Restoring, or Granting Injunction During Pendency of Appeal;" that all relief prayed for therein is DENIED; and that the clerk is directd to forthwith return said pleadings to plaintiff.

Date: March 11, 1986

J.P. VUXASIN, JR., JUDGE
UNITED STATES DISTRICT
COURT

A-16.

RONALD KRILETICH, Petitioner

v.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, Respondent

and

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, et al., Real Parties in Interest

No. C 85 5946 TEH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORDER

Before: FARRIS, PREGERSON and WIGGINS, Circuit Judges

This petition for writ of mandamus and all pending motions are denied. The district court's pre-filing review orders are subject to review in consolidated appeals 86-1736 and 86-1737.

Date Filed: July 25, 1986

A-17.

RONALD KRILETICH, Plaintiff-Appellant

v.

COMMISSION ON JUDICIAL PERFORMANCE, JOHN T. RACANELLI, et al., Defendants-Appellees

No. C 85 5946 TEH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ORDER

Before: FARRIS, PREGERSON and WIGGINS, Circuit Judges

All of appellant's pending motins are denied. Appellant is cautioned that the filing of additional frivolous motions may lead to the imposition of sanctions, including substantial financial penalties. Should appellant submit any additional papers, with the exception of a reply brief, the Clerk with lodge the papers for such consideration as the panel examining the merits of the appeals deems appropriate.

Appellant's opening brief and the briefs of appellees previously received will be filed. Any other appellees may file a brief within 28 days of the entry of this order. Appellant may file a reply brief within 42 days of entry of this order.

The Clerk will consider these appeals ripe for admission after 42 days from the entry of this order have passed.

Date Filed: July 25, 1986

APPENDIX B

28 United States Code Section 1915(a):

Any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that he is entitled to redress.

An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

28 United States Code Section 1915(d):

The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious.